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11 Attorneys for Plaintiff Barton Colson

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**
14

15 Barton Colson, individually,)
16)
17 Plaintiff,)
18 vs.)

Case No.

19 Javad Maghami a/k/a Javad Ghaemmaghami)
and Marie DeBernardi Maghami a/k/a Marie)
20 DeBernardi Ghaemmaghami, husband and)
wife; Javad and Marie Maghami d/b/a)
21 Scottsdale Lamborghini and/or Scottsdale)
Motorsports; Lamborghini of Scottsdale LLC,)
22 an Arizona limited liability company; Motor)
23 Sports of Scottsdale, Inc., an Arizona)
24 corporation; Motorsports of Scottsdale No. 2,)
LLC, an Arizona limited liability company;)
25 and Automobili Lamborghini America, LLC, a)
26 Delaware Corporation,)

VERIFIED COMPLAINT

JURY TRIAL REQUESTED

27 Defendants.)
28)
_____)

1 Plaintiff Barton Colson, for his Complaint against Defendants Javad Maghami
2 a/k/a Javad Ghaemmaghamsi and Marie DeBernardi Maghami a/k/a Marie DeBernardi
3 Ghaemmaghamsi, husband and wife; Javad and Marie Maghami d/b/a Scottsdale
4 Lamborghini and/or Scottsdale Motorsports; Lamborghini of Scottsdale LLC, an Arizona
5 limited liability company; Motor Sports of Scottsdale, Inc., an Arizona corporation;
6 Motorsports of Scottsdale No. 2, LLC, an Arizona limited liability company; and
7 Automobili Lamborghini America, LLC, a Delaware Corporation (collectively,
8 “Defendants”), alleges as follows:

9 **THE PARTIES**

10 1. Plaintiff Barton Colson (“Colson”) is an individual residing in Vancouver,
11 Washington.

12 2. Upon information and belief, Defendants Javad Maghami a/k/a Javad
13 Ghaemmaghamsi and Marie DeBernardi Maghami a/k/a Marie DeBernardi
14 Ghaemmaghamsi, husband and wife (the “Maghamis”), reside in Arizona and conduct
15 business in Maricopa County, Arizona.

16 3. The Maghamis committed acts and omissions in Maricopa County, Arizona
17 out of which this action arises, and at all times material hereto were acting for and on
18 behalf of their marital community.

19 4. Upon information and belief, at all times relevant to Colson’s claims, the
20 Maghamis were doing business as Scottsdale Lamborghini and/or Scottsdale
21 Motorsports, which are both unincorporated entities located in Scottsdale, Arizona.

22 5. The Maghamis are personally liable for all acts and omissions committed
23 by or on behalf of Scottsdale Lamborghini and/or Scottsdale Motorsports.

24 6. Upon information and belief, at all times relevant to Colson’s claims, the
25 Maghamis were principals of and were also doing business as Lamborghini of Scottsdale
26 LLC, an Arizona limited liability company with its principal place of business in
27 Scottsdale, Arizona.
28

1 17. On or about September 24, 2007, Colson met with defendant Javad
2 Maghami ("Maghami") at the dealership.

3 18. During that meeting, Maghami and Colson discussed a rare and limited
4 edition vehicle known as the Lamborghini Reventon.

5 19. When Colson expressed interest in purchasing a Reventon, Maghami stated
6 that he may be able to secure one.

7 20. Maghami explained that, to purchase a Reventon, Colson would need to
8 immediately place a \$500,000 deposit be considered to purchase the car, and then Colson
9 would need to pay an additional €600,000 prior to production of the Reventon.

10 21. He then told Colson that there would be an additional amount, between
11 €30,000-50,000, due at the delivery of the car.

12 22. On or about September 24, 2007, Colson wrote the Maghami defendants a
13 check for \$500,000 as a deposit for a Reventon. [See Check to Lamborghini of
14 Scottsdale, attached hereto as Exhibit A.]

15 23. The check was subsequently cashed.

16 24. On the same day, Colson signed an agreement with the Maghami defendants
17 for the purchase of a Reventon. [See Purchase Agreement, attached hereto as Exhibit B.]

18 25. Shortly after Colson signed the agreement and gave the Maghami
19 defendants a check for \$500,000, Colson was contacted by Maghami over the telephone.

20 26. Maghami told Colson that because Lamborghini's production of Reventons
21 was limited to 20 Reventons, each Reventon would have a specific production number.

22 27. When Colson requested Reventon Number 1 or Reventon Number 20,
23 Maghami informed him that those were not available but that Colson could purchase
24 Reventon Number 10.

25 28. During that conversation, Maghami also told Colson that Colson would need
26 to submit an application for Reventon Number 10.

1 29. Maghami explained that Colson was required to provide information about
2 himself so an application could be submitted to Lamborghini's Italian headquarters,
3 which would then determine whether Colson could purchase Reventon Number 10.

4 30. Maghami then told Colson that when Colson's application was approved by
5 Lamborghini's Italian headquarters, Colson was required to remit €600,000 (in addition
6 to the \$500,000 Colson already paid).

7 31. When Maghami and Colson spoke about the application, Maghami told
8 Colson that Colson could dictate the necessary information to Maghami, and then
9 Maghami would complete the application and forward it to Lamborghini's Italian
10 headquarters.

11 32. Thus, on that phone call, Colson answered Maghami's questions and
12 Maghami told Colson that Maghami would complete the application and submit it to
13 Lamborghini's Italian headquarters.

14 33. Colson understood that Maghami sent the application to Lamborghini's
15 Italian headquarters.

16 34. After this application process, on or about January 16, 2008, Colson again
17 spoke with Maghami about Reventon Number 10.

18 35. Maghami informed Colson that Colson's application to purchase Reventon
19 Number 10 was approved by Lamborghini's Italian headquarters and that Colson must
20 remit the €600,000 so that Reventon Number 10 could be assembled.

21 36. Maghami told Colson at that time that Reventon Number 10 would be
22 completed in August or September 2008.

23 37. At that time, Maghami gave Colson instructions on how to wire the
24 €600,000 into the Maghami defendants' account. Maghami told Colson that Colson must
25 wire the money to the Maghami defendants within 24 hours because the money must be
26 at Lamborghini's Italian headquarters within 48 hours of the application approval.
27 Maghami also stated that he would wire Colson's money to Lamborghini's Italian
28 headquarters the next day.

1 38. On or about January 16, 2008, Colson wired \$881,000 into Wells Fargo
2 Account Number 402001823, held by defendant Motor Sports of Scottsdale Inc. [*See*
3 Wire Transfer Confirmation, Jan. 16, 2008, attached hereto as Exhibit C.]

4 39. Colson received confirmation from Wells Fargo Bank that the wire transfer
5 was complete.

6 40. Despite that Marie Maghami promised to send a confirmation of the wire
7 that the Maghami defendants sent to Lamborghini's Italian headquarters, Colson never
8 received a receipt for the wire transfer or for the purchase of the vehicle from the
9 Maghami defendants.

10 41. To secure a receipt Colson began contacting the Maghami defendants.

11 42. At Colson's direction, his accountant Michelle Hansberry also began calling
12 the Maghami defendants in an attempt to secure a receipt for Reventon Number 10.

13 43. For several months Colson did not hear from the Maghami defendants,
14 despite repeated attempts to reach them.

15 44. In August 2008, Colson personally visited a Lamborghini assembling
16 factory in Italy.

17 45. The personnel at the factory could not locate any record of Colson's
18 purchase of Reventon Number 10, but promised to review their records and stay in touch
19 with Colson.

20 46. Colson did not receive any follow-up communications with the personnel at
21 the Italian factory.

22 47. Colson made several further attempts to contact the Maghami defendants
23 and personnel at the factory in the summer of 2008 regarding Colson's purchase of
24 Reventon Number 10, but did not receive a response from them.

25 48. At the same time, Colson's brother Brad Colson began contacting the
26 Maghami defendants to secure the paperwork Colson had earlier requested regarding
27 Reventon Number 10.

28 49. The Maghami defendants never sent any confirmation of the wire transfer.

1 50. In September 2008, Colson contacted Pietro Frigerio, the Chief Operating
2 Officer of defendant Lamborghini America to inquire about the status of Reventon
3 Number 10.

4 51. Frigerio informed Colson that Reventon Number 10 had been sold to
5 another buyer.

6 52. Frigerio told Colson that no Reventons had been allotted to the Maghami
7 defendants.

8 53. Colson never received Reventon Number 10.

9 54. Frigerio told Colson that Colson never will receive that car or any other
10 Reventon because they have all been sold.

11 55. Defendants have thus improperly taken \$1,381,000 from Colson between
12 September 2007 and January 2008.

13 56. Colson has knowledge that at least one 2009 Lamborghini Reventon, with
14 the same specifications as Reventon Number 10, was recently sold for \$2.4 million.

15 57. At the same time that Colson was placing his \$500,000 deposit for
16 Reventon Number 10, on or about September 2007, Colson also purchased from the
17 Maghami defendants a 2005 Lamborghini Murciélago for \$250,000.

18 58. Colson paid for that car with a check, and the check has been cashed.

19 59. At the time of purchase, Colson did not receive the title to that car.

20 60. Colson is the rightful owner of the Murciélago.

21 61. Despite making several demands for the title to that car, the Maghami
22 defendants have never given Colson title to the Murciélago.

23 62. Upon information and belief, the Maghami defendants own or have an
24 interest in property located in Maricopa County, Arizona.

25 63. The Maghami defendants have a bank account at Wells Fargo.

COUNT I

(Breach of Contract)

64. All allegations in the previous paragraphs are incorporated as if fully set forth herein.

65. On or about September 24, 2007, Colson and the Maghami defendants entered into a Purchase Agreement (the "Agreement"). [*See* Exhibit B.]

66. Pursuant to the terms of the Agreement, Colson has paid defendants the sum of \$1,381,000 and defendants agreed to sell Colson a 2009 Lamborghini Reventon – specifically Reventon Number 10.

67. Defendants have refused to deliver Reventon Number 10 to Colson.

68. As described above, defendants have breached the Agreement by failing to give Colson Reventon Number 10 after Colson paid \$1,381,000 for that vehicle.

69. As a direct and proximate result of defendants' material breaches of the Agreement, Colson sustained harm and injury, including but not limited to, actual and consequential damages in an amount to be determined at trial.

70. Pursuant to the terms of the Agreement, defendants are obligated to deliver to Colson Reventon Number 10.

71. To date, defendants have not delivered Reventon Number 10.

72. Colson is a "judgment creditor" as that term is defined by A.R.S. § 12-1570 in that Colson seeks an order from the Court "pursuant to chapter 14 of this title allowing [him] to garnish monies before final judgment on the underlying action."

73. Colson's claims herein arise out of contract. Colson, therefore, is entitled to an award of costs, expenses and attorneys' fees incurred herein pursuant to A.R.S. §12-341.01.

COUNT TWO

(Breach of the Covenant of Good Faith and Fair Dealing)

74. All allegations in the previous paragraphs are incorporated as if fully set forth herein.

1 75. Pursuant to Arizona law, the Agreement contained an implied covenant of
2 good faith and fair dealing whereby defendants were prohibited from depriving Colson of
3 the benefits of the Agreement.

4 76. Upon information and belief, contrary to their duty to act in good faith,
5 defendants deprived Colson of the benefits of the bargain by informing Colson that
6 Reventon Number 10 was available for sale, when defendants knew that Reventon
7 Number 10 had already been sold to another individual.

8 77. Upon information and belief, contrary to its duty to act in good faith,
9 defendants deprived Colson of the benefits of the bargain by accepting Colson's
10 payments for Reventon Number 10 knowing that defendants never would provide Colson
11 with Reventon Number 10.

12 78. Contrary to their duty to act in good faith, defendants deprived Colson of
13 the benefits of the bargain by refusing to provide Colson with Reventon Number 10 after
14 Colson had paid for Reventon Number 10.

15 79. Contrary to their duty to act in good faith, defendants deprived Colson of
16 the benefits of the bargain by refusing to refund Colson's \$500,000 deposit after learning
17 that defendants could not deliver Reventon Number 10 or any other Reventon because all
18 of the 2009 Reventons that had been manufactured or would be manufactured had
19 already been sold.

20 80. Contrary to their duty to act in good faith, defendants deprived Colson of
21 the benefits of the bargain by accepting Colson's \$881,000 payment on or about January
22 16, 2008, when defendants either knew or should have known that defendants could not
23 deliver Reventon Number 10 or any other Reventon because all of the 2009 Reventons
24 that had been manufactured or would be manufactured had already been sold.

25 81. Contrary to their duty to act in good faith, defendants deprived Colson of
26 the benefits of the bargain by refusing to refund Colson's \$1,381,000 after learning that
27 defendants could not deliver Reventon Number 10 or any other Reventon because all of
28

1 the 2009 Reventons that had been manufactured or would be manufactured had already
2 been sold

3 82. As a proximate cause of defendants' breaches, Colson has been damaged in
4 an amount to be determined at trial.

5 83. Colson's claims herein arise out of contract. Colson, therefore, is entitled
6 to an award of costs, expenses and attorneys' fees incurred herein pursuant to A.R.S. §12-
7 341.01.

8 **COUNT THREE**

9 **(Unjust Enrichment)**

10 84. All allegations in the previous paragraphs are incorporated as if fully set
11 forth herein.

12 85. Upon information and belief, defendants accepted payment from Colson for
13 Reventon Number 10 but never gave Colson Reventon Number 10.

14 86. Defendants were therefore unjustly enriched by receiving payments for
15 goods they never provided.

16 87. Colson was consequently impoverished by making payments for Reventon
17 Number 10, which he did not receive.

18 88. Defendants were not justified in receiving or retaining payments from
19 Colson for a product defendants never provided.

20 89. Colson has no legal remedy to redress the excess payments he made to
21 defendants.

22 **COUNT FOUR**

23 **(Negligent or Intentional Misrepresentation)**

24 90. All allegations in the previous paragraphs are incorporated as if fully set
25 forth herein.

26 91. On September 24, 2007, Maghami informed Colson that a 2009
27 Lamborghini Reventon was available for purchase.
28

1 92. Maghami later informed Colson that the Reventon that was available for
2 purchase was Reventon Number 10.

3 93. Maghami represented to Colson that Colson would receive Reventon
4 Number 10 if Colson signed the Agreement and paid defendants \$1,381,000.

5 94. Despite these representations, defendants sold Reventon Number 10 to a
6 different buyer.

7 95. Upon information and belief, the representations identified in ¶ 91 through
8 ¶ 93 herein were false.

9 96. Upon information and belief, defendants knew or should have known that
10 the representations identified in ¶ 91 through ¶ 93 herein were false or had reckless
11 disregard for their truth or falsity.

12 97. Defendants failed to inform Colson that the representations identified in ¶
13 91 through ¶ 93 herein were false.

14 98. Colson justifiably relied on defendants' representations as well as their
15 omissions when he signed the Agreement and paid defendants \$1,381,000.

16 99. Defendants knew or should have known that Colson would rely on their
17 representations in signing the Agreement and paying defendants \$1,381,000.

18 100. As a proximate cause of defendants' misrepresentations and/or omissions,
19 Colson has been damaged in an amount to be determined at trial.

20 101. Defendants acted with actual malice and intent and with a sufficient evil
21 mind such that Colson is entitled to recover punitive damages.

22 102. Colson's claims herein arise out of contract. Colson, therefore, is entitled
23 to an award of costs, expenses and attorneys' fees incurred herein pursuant to A.R.S. §12-
24 341.01.

25 **COUNT FIVE**

26 **(Fraudulent Concealment)**

27 103. All allegations in the previous paragraphs are incorporated as if fully set
28 forth herein.

1 104. On September 24, 2007, Maghami informed Colson that a 2009
2 Lamborghini Reventon was available for purchase.

3 105. Maghami later informed Colson that the Reventon that was available for
4 purchase was Reventon Number 10.

5 106. Maghami represented to Colson that Colson would receive Reventon
6 Number 10 if Colson signed the Agreement and paid defendants \$1,381,000.

7 107. Despite these representations, defendants sold Reventon Number 10 to a
8 different buyer.

9 108. Upon information and belief, the representations identified in ¶ 104 through
10 ¶ 106 herein were false.

11 109. Upon information and belief, defendants knew or should have known that
12 the representations identified in ¶104 through ¶106 herein were false or had reckless
13 disregard for their truth or falsity.

14 110. Defendants failed to inform Colson that the representations identified in ¶
15 104 through ¶ 106 herein were false.

16 111. Colson justifiably relied on defendants' representations as well as their
17 omissions when he signed the Agreement and paid defendants \$1,381,000.

18 112. Upon information and belief, defendants knew or believed when making
19 the representations to Colson that such representations were materially misleading
20 because they failed to include additional or qualifying information.

21 113. Colson justifiably relied on defendants' affirmative representations as well
22 as their omissions.

23 114. Defendants knew or should have known that Colson would rely on their
24 representations in signing the Agreement and paying defendants \$1,381,000.

25 115. As a proximate cause of defendants' actions, Colson suffered damages in
26 an amount to be determined at trial.

27 116. Defendants acted with actual malice and intent and with a sufficient evil
28 mind such that Colson is entitled to recover punitive damages.

1 20, 2008, filed concurrently herewith, has complied with the provisions of A.R.S. §§ 12-
2 2401, *et seq.*, and specifically A.R.S. § 12-2403. Colson is therefore entitled to the
3 issuance of writs of garnishment against Wells Fargo Bank.

4 147. Upon information and belief, defendant Motor Sports of Scottsdale, Inc. has
5 an account with Bank of America, account number 004878100888. Upon information
6 and belief, Bank of America is holding monies in account number 004878100888, on
7 behalf of defendant Motor Sports of Scottsdale, Inc.

8 148. Upon information and belief, the monies in the Bank of America account are
9 not earnings, pursuant to A.R.S. § 12-1598(4), as they do not constitute compensation
10 paid for personal services, and are not “wages, salary, commission, or bonus.”

11 149. Pursuant to A.R.S. § 12-1570.01(A)(2) and A.R.S. § 12-1577(A), Colson is
12 entitled to issuance of a writ of garnishment against Bank of America for monies held in
13 the checking account of defendant Motor Sports of Scottsdale, Inc.

14 150. Colson, by the filing of this Verified Amended Complaint and Application
15 for Provisional Remedy with Notice, and the sworn affidavit of Colson dated November
16 20, 2008, filed concurrently herewith, has complied with the provisions of A.R.S. §§ 12-
17 2401, *et seq.*, and specifically A.R.S. § 12-2403. Colson is therefore entitled to the
18 issuance of writs of garnishment against Bank of America.

19 151. Colson will file such other and further pleadings or affidavits as are required
20 by law or requested by the Court.

21 **COUNT NINE**

22 **(Application for Provisional Remedy: Constructive Trust)**

23 152. All allegations in the previous paragraphs are incorporated as if fully set
24 forth herein.

25 153. Upon information and belief, defendant Motor Sports of Scottsdale, Inc.
26 has an account with Wells Fargo Bank bearing the account number 402001823.
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1 amount of \$500,000 that was deposited into Bank of America account number
2 004878100888 controlled by defendant Motor Sports of Scottsdale, Inc. and the
3 Maghami defendants.

4 163. By reason of the fraudulent and wrongful manner in which the Maghami
5 defendants induced Colson to transfer the funds and/or write a check to the Maghami
6 defendants, and in order to prevent unjust enrichment, Colson holds an equitable lien
7 against any ownership interest the Maghami defendant may have in the funds, or any
8 property or profits derived therefrom.

9 **COUNT ELEVEN**

10 **(Breach of Contract)**

11 164. All allegations in the previous paragraphs are incorporated as if fully set
12 forth herein.

13 165. On or about September 2007, Colson also purchased from the Maghami
14 defendants a 2005 Lamborghini Murciélago for \$250,000.

15 166. Colson paid for that car with a check, and the check has been cashed.

16 167. The Maghami defendants received adequate consideration for the
17 Murciélago.

18 168. At the time of purchase, Colson did not receive the title to that car.

19 169. Colson is the rightful owner of the Murciélago, but despite making several
20 demands for the title to that car, the Maghami defendants have never given Colson title to
21 the Murciélago.

22 170. The Maghami defendants' failure to deliver title to the Murciélago has
23 proximately injured and impaired Colson and is in breach of the purchase agreement.

24 171. As a direct and proximate result of defendants' material breaches of the
25 Contract, Colson sustained harm and injury, including but not limited to, actual and
26 consequential damages in an amount to be determined at trial.
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1 172. Colson's claims herein arise out of contract. Colson, therefore, is entitled
2 to an award of costs, expenses and attorneys' fees incurred herein pursuant to A.R.S. §12-
3 341.01.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Colson demands judgment against all defendants as follows:

- 6 A. For actual, consequential, and punitive damages the amount of which will
7 be proven at trial;
- 8 B. For reasonable attorneys' fees;
- 9 C. For the amount of costs incurred herein, and accruing costs to them;
- 10 D. For pre-judgment and post-judgment interest at the maximum rate allowed
11 by law; and
- 12 E. For such other relief as may be deemed appropriate by the Court.

13 **WHEREFORE**, Colson further respectfully requests that the Court enter
14 judgment against the Maghami defendants as follows:

- 15 A. For a declaration that the Maghami defendants hold the \$881,000
16 transferred by Colson to Wells Fargo Account Number 402001823, or any property or
17 profits derived therefrom, as constructive trustees for the benefit of Colson.
- 18 B. For a declaration that Colson holds an equitable lien against any ownership
19 interest the Maghami defendants may have in the \$881,000 transferred by Colson to
20 Wells Fargo Account Number 402001823, or any property or profits derived therefrom.
- 21 C. For a declaration that the Maghami defendants hold the \$500,000 given by
22 Colson to the Maghami defendants and subsequently deposited into Bank of America
23 account number 004878100888, or any property or profits derived therefrom, as
24 constructive trustees for the benefit of Colson.
- 25 D. For a declaration that Colson holds an equitable lien against any ownership
26 interest the Maghami defendants may have in the \$500,000 t given by Colson to the
27 Maghami defendants and subsequently deposited into Bank of America account number
28 004878100888, or any property or profits derived therefrom.

